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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 274

CO-ORDINATED TRANSPORT, INC. OF ILLINOIS,
A CORPORATION, ET AL.,
Appellants,

vs.

EDWARD J. BARRETT, AS SECRETARY OF STATE OF THE STATE OF ILLINOIS, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

STATEMENT AS TO JURISDICTION

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INDEX

Subject Index

	Page
Jurisdictional statement in support of petition of Co-ordinated Transport, Inc. of Illinois, et al., for appeal to the Supreme Court of the United States	1
Statutory provisions sustaining jurisdiction	2
State statutes the validity of which is involved	2
Date of decree and application for appeal	2
Nature of case	3
This case is not controlled by *Bode* v. *Barrett*	5
The parties	6
The economic interests of the parties	6
The issues	7
The evidence	9
Citation of authority	11
Conclusion	14
Appendix "A"—An act to amend sections 9, 11a and 20 and to repeal sections 9(b), 9(c), 9(d), 9(e), 9(f), 9(g), 9(h), 9(i), 9(j), 9(k), and 9(l) of the "Motor Vehicle Law," approved June 30, 1919, as amended	15
Appendix "B"—Opinion of the Supreme Court of the State of Illinois	23

Table of Cases Cited

Bode v. *Barrett*, 412 Ill. 204	4
Bryant, New York ex rel. v. *Zimmerman*, 278 U.S. 63, 73 L. ed. 184	11
Clark v. *Poor*, 274 U.S. 554, 71 L. ed. 1199, 47 S. Ct. 702	12
Co-ordinated Transport, et al. v. *Barrett, et al.*, Docket No. 32,400, Agenda 27, May, 1952, Supreme Court of Illinois	13
Hendrick v. *Maryland*, 235 U.S. 610, 59 L. ed. 385, 35 S. Ct. 140	12
Hicklin v. *Coney*, 290 U.S. 169, 78 L. ed. 247, 54 S. Ct. 142	12

Page

Interstate Transit, Inc. v. Lindsey, 283 U.S. 183, 75 L. ed. 953, 51 S. Ct. 380 12
Kane v. *New Jersey*, 242 U.S. 160, 61 L. ed. 22, 37 S. Ct. 30 12
Schuylkill v. *Pennsylvania*, 206 U.S. 113, 80 L. ed. 91 12
Sprout v. *South Bend*, 277 U.S. 163, 72 L. ed. 833, 48 S. Ct. 502, 62 A.L.R. 45 12

STATUTES AND AUTHORITIES CITED

Constitution of the United States:
Article I, Section 8 ..... 2, 3, 11
Fourteenth Amendment, Section 1 ..... 2, 3, 11
Illinois Revised Statutes 1951, Chapter 95½, Section 9, et seq. (An act to amend sections 9, 11(a) and 20 and to repeal sections 9(b), 9(c), 9(d), 9(e), 9(f), 9(g), 9(h), 9(i), 9(j), 9(k) and 9(l) of the "Motor Vehicle Law", approved June 30, 1919, as amended) 2
Illinois Revised Statutes 1951, Chapter 102, Sections 11-16 7
Reciprocal Guide for Motor Vehicles 4
United States Code Annotated, Title 28, Section 1257, Subsection 2 1

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 274

CO-ORDINATED TRANSPORT, INC. OF ILLINOIS, A CORPORATION, ET AL.,

Appellants,

vs.

EDWARD J. BARRETT, AS SECRETARY OF STATE OF THE STATE OF ILLINOIS, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

JURISDICTIONAL STATEMENT IN SUPPORT OF PETITION OF CO-ORDINATED TRANSPORT, INC. OF ILLINOIS, ET AL., FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES

To the Honorable Sherman Minton, Justice of the Supreme Court of the United States:

The following statement in writing is made in accordance with Rule 12 of the Rules of the Supreme Court of the United States:

1. Reference is hereby made to subsection (2) of Section 1257 of Title 28 of the United States Code to sustain the right of petitioners to appeal from the final decree of the.

Supreme Court of the State of Illinois, the pertinent portions of which are as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * * *
>
> "(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.
>
> * * * "

2. Reference is made to "An Act to Amend Sections 9, 11 (a) and 20 and to repeal Sections 9 (b), 9 (c), 9 (d), 9 (e), 9 (f), 9 (g), 9 (h), 9 (i), 9 (j), 9 (k) and 9 (l) of the 'Motor Vehicle Law,' approved June 30, 1919 as amended," (Ill. Rev. Stats 1951, Chap. 95½, Sec. 9, et seq.), which act is claimed to be unconstitutional and void in its entirety. Said act is set forth verbatim as Appendix "A" to this jurisdictional statement.

3. The final decree of the Supreme Court of Illinois sought to be reviewed, sustaining the validity of the statute in question, was entered on the 4th day of June, 1952.

4. The application for appeal is presented to the Honorable Sherman Minton, Justice of the Supreme Court of the United States, on the 15th day of July, 1952.

5. The plaintiffs-appellees filed a complaint in the Circuit Court of Kane County, Illinois on behalf of themselves and all others similarly situated to enjoin the enforcement of said statute and have said statute declared unconstitutional. The complaint charged that said statute was unconstitutional and void and violated the provisions of Section 8 of Article I and Section 1 of Amendment XIV of the Constitution of the United States.

6. The appellants filed an answer denying the allegations of the complaint, and evidence was introduced by both parties.

7. On January 15, 1952, the Circuit Court of Kane County, Illinois entered a decree finding that said act violated said constitutional provisions and holding said act unconstitutional.

8. Said decree was appealed to the Supreme Court of Illinois by the defendants-appellants. On June 4, 1952, the Supreme Court of the State of Illinois entered an order reversing and setting aside said decree, and its decision was in favor of the validity and constitutionality of said statute. The opinion of the Supreme Court of Illinois in said case is hereto attached.

9. Said complaint alleged that said statute was repugnant to numerous provisions of the Constitution of the United States and to the Constitution of the State of Illinois.

10. Paragraph 4 of said complaint alleged that said statute violated Section 8 of Article I and Section 1 of Amendment XIV to the Constitution of the United States (R. 30).

11. Paragraph 5 of said complaint alleged that the taxes imposed by said statute are so excessive in amount that they are confiscatory and in violation of the constitutional provisions set forth above (R. 30-31).

12. Paragraph 6 of the complaint alleged that the tax imposed by said act constituted an undue burden upon interstate commerce and is a discrimination against interstate commerce, was greatly in excess of a fair contribution from the plaintiffs and all others in the same class for the privilege enjoyed by them of using the highways of the State of Illinois, and was in violation of said constitutional provisions (R. 31-32-33-34-35).

13. Paragraph 7 of said complaint alleged that the tax imposed by said statute was confiscatory, arbitrary, unrea-

sonable and void, in violation of said constitutional provisions (R. 35).

14. Paragraphs 8 and 9 of said complaint alleged that said act denied to the plaintiffs and others similarly situated the equal protection of the laws, in violation of said constitutional provisions (R. 35-36-37).

15. Paragraph 10 of said complaint alleged that said statute contained numerous arbitrary, inconsistent, vague and uncertain classifications, in violation of said constitutional provisions (R. 37-38).

15a. The evidence consisted of testimony as to the effect of the act on the truck industry of a truck expert, of a transportation expert, and of officials of the State of Illinois (R. 270 through 668). Many exhibits showing mileages of different types of carriers were introduced (R. 209-241). The Reciprocal Guide for Motor Vehicles, published by the Secretary of State, which is a summary of the agreements of the State of Illinois and other states concerning reciprocity, was introduced as Plaintiffs' Exhibit 10 (R. 263).

16. The opinion of the Supreme Court of Illinois in the decree here appealed from summarizes the issues presented as follows:

> "The decree found, as was alleged in the complaint, that the act was in violation of the provisions of section 8 of article I, and section 1 of amendment XIV of the constitution of the United States and of article III, section 2 of article II, sections 1, 2, 3, and 10 of article IX, and section 13 of article IV of the constitution of the State of Illinois, and therefore unconstitutional, void, and of no legal force.
>
> "Each of the issues as to unconstitutionality presented in the pleadings, briefs and arguments in the instant case was presented to and decided by this court in its recent decision in the case of *Bode* v. *Barrett*, 412 Ill. 204, opinion rendered March 20, 1952, with the

exception of the issue raised under section 13 of article IV of the Illinois constitution.

"Plaintiffs make the further contention that the 1951 amendment is confiscatory and violative of the fourteenth amendment to the United States constitution and of article II of the Illinois constitution; also that it violates article III of the Illinois constitution in unlawfully delegating legislative authority to the Secretary of State; that the taxes imposed constitute property taxes invalid under article IX of the Illinois constitution because it was not based upon value; also, that the equal protection of the laws guaranteed under both the Illinois and United States constitutions is denied them by the provision relating to agricultural exemptions contained in section IX of the act. These same problems were all earnestly considered by the court in the *Bode* case. We adhere to our conclusions reached therein."

The opinion of the court was necessarily a decision on the various federal constitutional issues raised by the plaintiffs. The constitutional issues were raised, and therefore, must necessarily have been decided, even though the court based its decision on the case of *Bode* v. *Barrett*.

This Case Is Not Controlled By Bode v. Barrett

The Supreme Court of Illinois rendered an opinion in the case of *Bode* v. *Barrett, et al.*, on March 20, 1952. That case is now pending on appeal before this Honorable Court, but this case is not controlled by *Bode* v. *Barrett*. The case differs from *Bode* v. *Barrett* in:

A. The parties
B. The economic interests of the parties
C. The issues
D. The evidence

A. The Parties

The plaintiffs in the *Bode* case were eleven (11) in number. The witnesses for the plaintiffs in the *Bode* case were all local carriers engaged only in intrastate operations, and more than half of them were farmers in the Springfield area. In the instant case the plaintiffs numbered more than fifty (50) carriers representing every type of interstate and intrastate hauler, contract carrier, common carrier, private carrier, line haul, short haul and local carrier, and truck broker.

B. The Economic Interests of the Parties

It is clear that the economic interests of the plaintiffs and their witnesses in the *Bode* case were different and even divergent from those of the plaintiffs in this case, since the operations of those in the *Bode* case were wholly intrastate in character, while in the instant case the plaintiffs were engaged substantially in interstate operations. This difference in interest is borne out by a reference to appellees' brief in the *Bode* case. In urging that the 1951 Act is unconstitutional in that it is discriminatory, the plaintiffs in the *Bode* case charged that the discrimination was against the private carrier and local carrier (Appellees' Brief, pp. 44-46, et seq.) Although no plaintiff was engaged in interstate commerce, appellees' brief in the *Bode* case attacked the 1951 Act as violating the Commerce Clause of the Federal Constitution, doing so on the limited ground that the tax constituted an undue burden because of the discrimination arising out of its reciprocity provisions. Valid as that ground is, it is not the basis upon which we rely in contending that the tax is an undue burden on interstate commerce. However, carriers engaged solely in intrastate operations could not be expected to urge fully the issues relating to interstate commerce. We contend

that the Act is unconstitutional and an undue burden on interstate commerce because it is excessive in amount, bears no reasonable relationship to the privilege of using the highway and is discriminatory.

The interests of the plaintiffs in the Sangamon County suit likewise differed for the reason that they were concerned largely with fees for light and medium weight trucks used in local and short-distance hauling, while we are concerned as well with the entire fee schedule and the discrimination against the heavier vehicle. It is evident from the brief and transcript of the oral argument of appellees in the *Bode* case that the issues of unconstitutionality urged therein were, understandably enough, the issues which affected them as local and private carriers operating entirely within the State.

C. The Issues

The only feature in common between the two suits was that each sought to have the 1951 Act declared unconstitutional. Plaintiffs in the *Bode* case sued as citizens and taxpayers of Illinois pursuant to the Act authorizing suits in equity by taxpayers to restrain the disbursement of public moneys by State officials. Ill. Rev. Stats. 1951, Chap. 102, Secs. 11-16. The instant suit, on the other hand, was a suit in equity brought by motor carriers, against the Secretary of State and other officials charged with enforcement of said Act, seeking by injunction to restrain its enforcement and to have a declaratory judgment rendered declaring said Act unconstitutional.

Some of the issues involving the Constitution of the United States were touched upon in the *Bode* case, but many were not even discussed and many were approached from an entirely different and limited point of view, and the decision in the *Bode* case is not controlling of the issues which are here presented.

First: The tax is unconstitutional in that it violates the Commerce Clause of the Constitution of the United States. In the *Bode* case the plaintiffs attacked the Act on the ground that it violated the Commerce Clause, but on the very limited ground that it constituted an undue burden because of the discrimination arising out of its reciprocity provisions. It is our contention that the Act is unconstitutional and an undue burden on interstate commerce because it is excessive in amount, bears no reasonable relationship to the privilege of using the highway and is discriminatory.

Second: By reason of the excessive amount of the tax, the entire trucking industry or a large segment of the industry is confiscated and prohibited. In the *Bode* case confiscation was raised only with reference to private or local carriers, and the testimony of only four affected carriers was presented to the Court. The testimony in this case was far more extensive and demonstrated to the satisfaction of the Trial Court that both interstate and intrastate carriers were affected, and in view of the volume of the evidence we contend not that a few scattered carriers are affected, but rather that the entire industry, or a large segment thereof, is illegally prohibited by operation of the excessive tax.

Third: This Act contains numerous arbitrary, inconsistent, vague and uncertain classifications in violation of the Constitution of the United States. This point was raised in the *Bode* case but was raised solely from the effect that these uncertain classifications had upon the local carrier. They took the position that the Act discriminated against the local carrier in favor of the line haul and common carrier. We contend that the Act is unconstitutional insofar as all of the trucking industry is concerned.

Fourth: The agricultural exemption contained in Section 9 is unconstitutional. This point was attacked in the *Bode*

case from the point of view of unlawful delegation of authority, while we attack it directly as being unconstitutional in that it is an unreasonable classification.

D. The Evidence

In addition, a further significant difference should be pointed out to the court with reference to the evidence in this case and the evidence in the *Bode* case. Defendants in both of these cases introduced evidence by way of oral testimony and exhibits to show that the basis for the tax schedule in the 1951 Act was the so-called "ton-mile theory" applied to all vehicles at the ton-mile rate now imposed on passenger cars.

Plaintiffs in the *Bode* case made no attempt to challenge the validity of this theory as the basis for a constitutional tax and did not introduce any evidence to show the unconstitutionality of the tax basis. In the instant case, plaintiffs offered the testimony of Professor John S. Worley, a recognized leader in the field of highway engineering and administration, which revealed that the ton-mile theory as applied by the authors of this tax was so fundamentally unsound as to be excessive in some classifications by as much as 300% and, hence, patently arbitrary and discriminatory. Throughout his analysis Professor Worley proceeded on the assumption that the total revenue sought under the 1951 Act is reasonably required to meet state highway needs, and plaintiffs did not question the estimate of needed revenue for road purposes which the state made. Plaintiffs did, however, vigorously attack the theory upon which was based the registration fee schedule for raising the estimated required revenue. In doing so, we contend that the theory results in a schedule that is discriminatory and excessive.

Summarizing the testimony of Professor Worley attacking the theory behind the tax schedule in the 1951 Act,

he testified that numerous items of highway cost have no relation to the weight of the vehicles passing over the highways. Costs such as grading, fencing, signs, signals, landscaping, roadside parks, right-of-way, diversion of funds to other uses than highway uses, etc., quite obviously are not affected by the weight of vehicles passing over state roads. Other costs, on the other hand, are related wholly or partly to the vehicular weight of traffic. Under this common-sense distinction, some 60% of highway costs is not affected by weight, while 40% is. Defendants' witness did not deny that some highway costs were not affected by weight, but stated that they could not be accurately measured. Defendants' exhibit 7 in support of the 1951 Act fee schedule shows that weight (expressed in terms of "ton-mile") was the sole criterion in distributing highway costs among the various classes of trucks. For comparison with defendants' exhibit 7, Professor Worley prepared six corresponding exhibits (plaintiffs' exhibits 11-16, incl.) in which the various items of highway cost are broken down into those costs affected by weight and those not affected by weight; that portion of total highway costs affected by weight was then distributed among the vehicle classifications on a ton-mile basis, and that portion not affected by weight was distributed on a vehicle-mile basis. The resultant tax schedule appears in plaintiffs' exhibit 15.

It is not plaintiffs' position that any particular tax schedule is the only constitutional schedule; it is our position that any fee schedule purporting to tax for the privilege of road use is unconstitutional if it is in fact arbitrary, unreasonable and discriminatory. The 1951 Act contains such a fee schedule and in some vehicle classifications is as much as 300% in excess of the fee that properly could be charged for the privilege of road use.

Only four witnesses in the *Bode* case testified that the tax increase would exceed their net profits so as to force them

out of business. In the case at bar some seventeen truckers testified to this same effect, with this very important difference: in the *Bode* case the witnesses were all local carriers, whereas in the instant case the witnesses included every type of carrier: line haul, short haul, contract, local and private hauler, interstate, intrastate operator and truck broker. These witnesses, moreover, are owners and operators of all types of equipment. In addition, two officials of banks which heretofore had engaged heavily in truck financing testified that they had already substantially curtailed their truck loans because of the greatly increased tax and its consequent effect upon the ability of truckers to pay for their equipment. Thus, by the testimony of a representative cross-section of the trucking industry and of parties engaged in truck financing, it was conclusively demonstrated that the new tax will be confiscatory both as to the individual business of the witnesses and as to the trucking industry as a whole in all its branches in Illinois.

Thus, it is apparent that the case of *Bode, et al.* v. *Barrett, et al.*, is not the same as this case and that the decision in the former should not control in this case.

Citation of Authority

As pointed out above, the Supreme Court of Illinois in this case in the opinion rendered June 4, 1952, states that the plaintiffs have drawn in question the repugnancy of this amendment to the Motor Vehicle Laws to Section 8, Article I of the Constitution of the United States, and to the XIV Amendment to the Constitution of the United States. There can be no question that the repugnancy of this statute to the Constitution of the United States was an issue before the Supreme Court of the State of Illinois. The cases which sustained jurisdiction are as follows:

New York ex rel Bryant v. *Zimmerman*, 278 U. S. 63; 73 L. Ed. 184.

In this case the court said, on page 67:

> "There are various ways in which the validity of a state statute may be drawn in question on the ground that it is repugnant to the constitution of the United States. No particular form of words or phrases is essential, but only that the claim of invalidity and the ground therefor be brought to the attention of the state court with fair precision and in due time. And if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented."

In *Schuylkill* v. *Pennsylvania*, 206 U. S. 113, 80 L. Ed. 91, the court said, on page 121:

> "Whether the point was in fact raised in the court below is itself a federal question and we are bound to examine the record to resolve it."

Other cases in which this court has taken jurisdiction to decide the validity of similar statutes of other states are as follows:

Hendrick v. *Maryland*, 235 U. S. 610; 59 L. Ed. 385; 35 S. Ct. 140 (1915);

Kane v. *New Jersey*, 242 U. S. 160; 61 L. Ed. 22; 37 S. Ct. 30 (1916);

Clark v. *Poor*, 274 U. S. 554; 71 L. Ed. 1199; 47 S. Ct. 702 (1927);

Sprout v. *South Bend*, 277 U. S. 163; 72 L. Ed. 833; 48 S. Ct. 502; 62 A.L.R. 45 (1928);

Interstate Transit, Inc. v. *Lindsey*, 283 U. S. 183; 75 L. Ed. 953; 51 S. Ct. 380 (1931);

Hicklin v. *Coney*, 290 U. S. 169; 78 L. Ed. 247; 54 S. Ct. 142 (1933).

The grounds on which it is believed that the questions raised are substantial are:

(a) The statute involved is designed to raise a revenue of $20,000,000.00 per year.

(b) The plaintiffs involved are more than 50 in number and represent every type of interstate and intrastate hauler, contract carrier, common carrier, private carrier, line haul, short haul and local carrier doing business in the State of Illinois. Furthermore, this suit was a representative suit on behalf of all others similarly situated to the plaintiffs (R. 2-31).

(c) The owners of over 347,000 trucks and buses and over 58,000 trailers are affected in the license fees assessed (R. 497).

(d) The many thousands of interstate carriers that use the highways of the State of Illinois at any time during the year are affected by the statute.

(e) All truck owners residing in and doing business in Illinois are affected by the arbitrary character of the law in question.

(f) The terrific amount of tax imposed by this statute, which amount is so much greater than has ever been assessed by any other state that it in itself constitutes an undue burden on interstate commerce.

17. Appendix "B" is a copy of the opinion of the Supreme Court of Illinois in the case here appealed, *Co-Ordinated Transport, et al.* v. *Edward J. Barrett, et al.*, No. 32400.

18. The stage of the proceedings in which the questions were raised in the Circuit Court of Kane County, being the court of first instance, was the complaint (R. 26).

19. The method of raising was a prayer for injunction against the enforcement of the act and for a declaratory judgment that the act was void. The federal questions were specifically stated in the complaint.

20. The method of raising the federal questions was by obtaining an injunction against the enforcement of the act and a declaratory judgment finding that the act was invalid and by appeal by the defendants to the Supreme Court of Illinois, which reversed the decree of the Circuit Court of Kane County, Illinois and passed upon the federal questions in its opinion.

Conclusion

The main issue involved in this case was the repugnancy of a statute to the Constitution of the United States, and there can be no question that this court has jurisdiction to hear this appeal.

Respectfully submitted,

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APPENDIX "A"

An Act to amend Sections 9, 11a and 20 and to repeal Sections 9 (b), 9 (c), 9 (d), 9 (e), 9 (f), 9 (g), 9 (h), 9 (i), 9 (k) and 9 (l) of the "Motor Vehicle Law", approved June 30, 1919 as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

SECTION 1. Sections 9, 11a and 20 of the "Motor Vehicle Law", approved June 30, 1919, as amended, are amended to read as follows:

SECTION 9. All owners of vehicles of the second division as described in Section 2 of this Act, which are designed or equipped or used for carrying freight, goods, wares or merchandise, and all owners of vehicles of said first division which have been remodeled and are being used for such purposes, and all owners of selfpropelled vehicles operated as tractors to the weights of which are added the gross weights of the heaviest semi-trailers with their loads used with such tractors, and all owners of vehicles of said second division which are used for carrying more than seven persons, shall pay to the Secretary of State for each calendar year from and after January 1, 1936, for the use of the public highways of this State, a license fee of five dollars ($5.00) for each such vehicle.

Every application for registration of a truck subject to regulation under the provisions of "An Act in relation to the regulation of the operations of trucks designed or used for the transportation of property", approved July 25, 1939, as amended, shall, be accompanied by proof that a valid and unrevoked certificate of safety has been issued for each such truck. No certificate of registration or license plates shall be issued by the Secretary of State to the owner or any such truck unless such proof accompanies such application.

Every owner of a motor vehicle subject to the provisions of this section shall pay to the Secretary of State for each

calendar year from and after January 1, 1952, for the use of the public highways a tax at the following rates, to-wit:

(a) Vehicles having a gross weight of three thousand (3000) pounds and less, including the weight of the vehicle and maximum load, $5.00.

(b) Vehicles having a gross weight of more than three thousand (3000) pounds and not more than eight thousand (8000) pounds, including the weight of the vehicle and maximum load, $15.00 until January 1, 1954, and thereafter $21.00.

(c) Vehicles having a gross weight of more than eight thousand (8000) pounds and not more than ten thousand (10,000) pounds, including the weight of the vehicle and maximum load, $41.00 until January 1, 1954, and thereafter $58.00.

(d) Vehicles having a gross weight of more than ten thousand (10,000) pounds and not more than twelve thousand (12,000) pounds, including the weight of the vehicle and maximum load, $62.00 until January 1, 1954, and thereafter $87.00.

(e) Vehicles having a gross weight of more than twelve thousand (12,000) pounds and not more than fourteen thousand (14,000) pounds, including the weight of the vehicle and maximum load, $81.00 until January 1, 1954, and thereafter $114.00.

(f) Vehicles having a gross weight of more than fourteen thousand (14,000) pounds and not more than sixteen thousand (16,000) pounds, including the weight of the vehicle and maximum load, $101.00 until January 1, 1954, and thereafter $141.00.

(g) Vehicles having a gross weight of more than sixteen thousand (16,000) pounds, and not more than twenty thousand (20,000) pounds, including the weight of the vehicle and maximum load, $154.00 until January 1, 1954, and thereafter $216.00.

(h) Four wheel vehicles having a gross weight of more than twenty thousand (20,000) pounds, and vehicles having more than four wheels, having a gross weight of more than twenty thousand (20,000) pounds, and not more than twenty-four thousand (24,000) pounds, including the weight of the

vehicle and maximum load, $251.00 until January 1, 1954, and thereafter $352.00

(h-1) Four wheel vehicles designed and used for the carrying of more than seven passengers and equipped with balloon tires and hydraulic shock absorbers and having a gross weight of more than twenty-four thousand (24,000) pounds and not in excess of thirty-six thousand (36,000) pounds, including the weight of the vehicle and maximum load, $389.00 until January 1, 1954, and thereafter $545.00.

(i) Four or more wheeled vehicles having a gross weight of more than twenty-four thousand (24,000) pounds and not in excess of thirty thousand (30,000) pounds, including the weight of the vehicle and maximum load, $420.00 until January 1, 1954, and thereafter $588.00.

Six or more wheeled vehicles having a gross weight of more than thirty thousand (30,000) pounds and not in excess of thirty-six thousand (36,000) pounds, including the weight of the vehicles and maximum load, $579.00 until January 1, 1954, and thereafte $810.00.

Six or more wheeled vehicles having a gross weight of over thirty-six thousand (36,000) pounds, but not exceeding forty-one thousand (41,000) pounds, including the weight of the vehicle and maximum load, $635.00 until January 1, 1954, and thereafter $890.00.

(i-1) Six or more wheeled vehicles having a gross weight of more than forty-one thousand (41,000) pounds, but not exceeding forty-five thousand (45,000) pounds, including the weight of the vehicle and maximum load, $700.00 until January 1, 1954, and thereafter $980.00.

(i-2) Eight or more wheeled vehicles having a gross weight of more than forty-five thousand (45,000) pounds, but not exceeding fifty thousand (50,000) pounds, including the weight of the vehicle and maximum load, $784.00 until January 1, 1954, and thereafter $1098.00.

(i-3) Eight or more wheeled vehicles having a gross weight of over fifty thousand (50,000) pounds, including the weight of the vehicle and maximum load, $889.00 until January 1, 1954, and thereafter $1245.00.

(i-4) Ten or more wheeled vehicles having a gross weight

of more than fifty thousand (50,000) pounds, but not exceeding seventy-two thousand (72,000) pounds, including the weight of the vehicle and maximum load, $1134.00 until January 1, 1954, and thereafter $1588.00.

(j) A self-propelled vehicle operated as a tractor and one semi-trailer shall be considered as one vehicle in computing the above license fees. A semi-trailer used with any device for converting it to a trailer or attached to a leading trailer or semi-trailer shall be licensed as a trailer.

(k) Each additional semi-trailer to be used with a tractor licensed as above, $5.00.

(l) Tractors, traction engines or other similar vehicles used for hauling purposes, except as hereinafter provided, shall pay the same fees according to their weight as hereinbefore required in this section of other vehicles. All owners of trailers used with a motor vehicle shall pay to the Secretary of State for each calendar year from and after January 1, 1952, flat weight taxes for the use of the public highways of this State at the following rates to-wit:

(1) Trailers having a gross weight of 2,000 pounds and less, including the weight of the trailer and maximum load, $1.00.

(2) Trailers having a gross weight of more than two thousand (2,000) pounds, and not more than five thousand (5,000) pounds, including the weight of the trailer and maximum load, $15.00 until January 1, 1954, and thereafter $21.00.

(3) Trailers having a gross weight of more than five thousand (5,000) pounds, and not more than ten thousand (10,000) pounds, including the weight of the trailer and maximum load, $44.00 until January 1, 1954, and thereafter $61.00.

(4) Trailers having a gross weight of more than ten thousand (10,000) pounds, and not more than fifteen thousand (15,000) pounds, including the weight of the trailer and maximum load, $79.00 until January 1, 1954, and thereafter $111.00.

(5) Trailers having a gross weight of more than fifteen thousand (15,000) pounds, and not more than twenty thousand (20,000) pounds, including the weight of the trailer and

maximum load, $125.00 until January 1, 1954, and thereafter $175.00.

(6) Trailers having a gross weight of more than twenty thousand (20,000) pounds, and not more than thirty-two thousand (32,000) pounds, including the weight of the trailer and maximum load, $57.00 until January 1, 1954, and thereafter $780.00.

(7) Trailers having a gross weight of more than thirty-two thousand (32,000) pounds, including the weight of the trailer and maximum load, $557.00 until January 1, 1954, and thereafter $780.00.

Two axle vehicles which are designed and used for transporting more than seven passengers entirely within the territorial limits of a single municipality or a single municipality and municipalities contiguous thereto, or a close radius thereof, are equipped with hydraulic shock absorbers and whose rates for transportation are subject to the regulation of the Illinois Commerce Commission, a tax at the following rates:

(1) Such vehicles having a gross weight of more than twelve thousand (12,000) pounds but not exceeding fourteen thousand (14,000) pounds, including the weight of the vehicle and the maximum load, $45.00;

(2) Such vehicles having a gross weight of more than fourteen thousand (14,000) pounds but not exceeding sixteen thousand (16,000) pounds including the weight of the vehicle and the maximum load, $70.00;

(3) Such vehicles having a gross weight of more than sixteen thousand (16,000) pounds but not exceeding twenty thousand (20,000) pounds including the weight of the vehicle and the maximum load, $105.00;

(4) Such vehicles having a gross weight of more than twenty thousand (20,000) pounds but not exceeding twenty-four thousand (24,000) pounds including the weight of the vehicle and the maximum load, $145.00;

(5) Such vehicles having a gross weight of more than twenty-four thousand (24,000) pounds but not exceeding thirty-six thousand (36,000) pounds including the weight of the vehicle and the maximum load, $195.00.

The registration fee paid by the State of Illinois, or by any county, township, municipal corporation, city, village or incorporated town for each motor vehicle of the second division owned and operated by it, or by any school district for each motor vehicle of the second division owned and operated by it as a school bus, shall be two dollars for each calendar year.

Upon the filing in the office of the Secretary of State of said application and payment of the registration fee as hereinbefore provided, the Secretary of State, or his duly authorized agent, shall, without further fee, assign to such trailer or semi-trailer as described in said application, a distinctive number plate which shall be attached to the rear of the trailer or semi-trailer. Such license plate shall be so attached as not to swing loosely and shall be not less than twenty inches above the surface of the ground. It shall at all times be kept clean from grease and dirt. None of the owners of the vehicles of said second division shall be required to pay the registration fees in section 8 of this Act. Provided, that none of the provisions of this act requiring or prescribing registration shall be construed to include farm tractors, traction engines, threshing machines, clover huller, ensilage cutters, corn shredders, corn sheller, corn grinders, hay presses, portable saw mills, binders, combines, farm machinery and implements, farm wagons, or like vehicles, trailers or semi-trailers used in connection therewith, which are used primarily in the agricultural pursuits of the owner thereof or in connection with the agricultural pursuits of others, or vehicles used exclusively for moving water well drilling outfits, but nothing in this proviso shall exclude from registration truck tractors, trucks, trailers, or semi-trailers engaged in transporting agricultural products. The owner of any motor vehicle of the second division having a corn sheller, a well driller, hay press, clover huller or farm machinery permanently mounted thereon and used solely for transporting the same, shall pay the license fee of five dollars ($5.00), provided in the first paragraph of this section and shall be exempt from the flat weight tax provided in this Act; Provided, that no such owner shall be entitled to any reduction in such five

dollar ($5.00) license fee for the reason that such fee may first become payable during the second half of the calendar year.

Section 11a. Any person, firm or corporation who shall violate any of the provisions of Sections 3a, 9 or 10 shall be subject to a penalty of not less than $10.00, nor more than $100.00 for each offense, together with costs of suit, and shall also be held liable for the payment of all damages caused to any public highway by such violation. Any vehicle used in violation of any section of this Act and thereby causing damage to any public highway shall be subject to a lien for the full amount of all unpaid registration fees, flat weight fees, penalties and damages; provided, however, that such lien shall not release the offender from the full payment of all registration fees, flat weight fees, penalties and damages which may be due from him or be recovered against him in any court of competent jurisdiction and, provided, also that such lien shall not be superior to any chattel mortgage or other lien attaching to such vehicle.

Section 20. Except as herein provided for foreign corporations, the provisions of sections 8, 9, 10, 14, 17, and 27 of this Act, shall not apply to any other motor vehicle or motor bicycle owned by non-residents of this State if the owner thereof has complied with the law requiring the registration of motor vehicles or motor bicycles or the names of the owners thereof in force in the city, state, foreign country or province, territory or Federal district of his residence: and the registration number showing the initial or abbreviation of the name of such city, state, foreign country or province, territory or Federal district, is displayed on such vehicle substantially as is provided in section 14 of this Act: Provided, that the provisions of this section shall be operative as to a motor vehicle or motor bicycle owned by a non resident of this State only to the extent that under the laws of the city, state, foreign country or province, territory or Federal district of his residence, like exemptions and privileges are granted to motor vehicles or motor bicycles duly registered under the laws of and owned by the residents of this State, if, under the laws of such city, state, foreign

country or province, territory or Federal district, motor vehicles or motor bicycles owned by residents of this State, operating upon the highways of such city, state, foreign country or province, territory or Federal district, are required to pay the registration fee and carry the license plates or pay any other fee or tax to such city, state, foreign country or province, territory or Federal district, the motor vehicle or motor bicycles owned by residents of such city, state, foreign country or province, territory or Federal district, and operating upon the highways of this State shall comply with the provisions of sections 8, 9, 10, 14, 17 and 27 of this Act. Foreign corporations, partnerships and individuals owning, maintaining or operating places of business in this State and using motor vehicles or motor bicycles in connection with such places of business, shall comply with the provisions of sections 8, 9, 10, 14, 17 and 27 of this Act insofar as the motor vehicles and motor bicycles used in connection with such places of business are concerned.

In order to effectuate the purposes of this section, the Secretary of State of Illinois shall have authority to enter into reciprocal agreements with the responsible officers of other states as to licenses, permit fees and flat taxes under which motor vehicles, trucks, tractors, trailers or semi-trailers properly licensed or registered in other states may be operated in this State without an Illinois registration or the payment of permit fees or flat taxes; provided like privileges are accorded to vehicles owned by Illinois citizens when operated in such other states.

Section 2. Sections 9 (b), 9 (c), 9 (d), 9 (e), 9 (f), 9 (g), 9 (h), 9 (i), 9 (j), 9 (k), and 9 (l), of said Act are repealed.

Section 3. This amendatory act shall be effective January 1, 1952.

Approved July 9, 1951. (Ill. Rev. Stat., Vol. 2, p. 193.)

APPENDIX "B"

Docket No. 32400—Agenda 27—May, 1952

CO-ORDINATED TRANSPORT, INC., OF ILLINOIS, et al., *Appellees*,

v.

EDWARD J. BARRETT, Secretary of State, et al., *Appellants*

PER CURIAM:

This is a direct appeal by the Secretary of State, the sheriff of Kane County, and the commanding officer of the second district of the State Highway Police of the State of Illinois, defendants below, from a final decree of the circuit court of Kane County which declared unconstitutional and void an act of the Sixty-seventh General Assembly, approved by the Governor of Illinois on July 9, 1951, entitled "An Act to amend Sections 9, 11a and 20 and to repeal Sections 9b, 9c, 9d, 9e, 9f, 9g, 9h, 9i, 9j, 9k and 9l of the 'Motor Vehicle Law,' approved June 30, 1919, as amended," (Laws of 1951, p. 1147,) and which enjoined and restrained the defendants from attempting to enforce the provisions of said act and from interfering with or from stopping or attempting to stop the plaintiffs from using the highways of the State of Illinois by reason of noncompliance with said act, and permanently enjoining the defendants, their agents, servants and employees from instituting any action, civil or criminal, against the plaintiffs under said act.

The decree found, as was alleged in the complaint, that the act was in violation of the provisions of section 8 of article I, and Section 1 of amendment XIV of the constitution of the United States and of article III, section 2 of article II, sections 1, 2, 3, and 10 of article IX, and section 13 of article IV of the constitution of the State of Illinois, and therefore unconstitutional, void, and of no legal force.

Each of the issues as to unconstitutionality presented in the pleadings, briefs and arguments in the instant case was presented to and decided by this court in its recent decision in the case of *Bode* v. *Barrett*, 412 Ill. 204, opinion rendered March 20, 1952, with the exception of the issue raised under section 13 of article IV of the Illinois constitution.

The plaintiffs in the present case constitute more than fifty motor vehicle carriers representing most every type of such carrier in the State of Illinois. The parties do not sue in their representative capacity, as they did in the *Bode case*, but the relief sought is the same as that prayed for in that case. The fact that the economic interests of many of the plaintiffs in this case are not identical with the economic interests of the parties to the *Bode case* does not change the character of the constitutional issues presented and argued in each of the cases.

The testimony of fourteen plaintiff truck operators of various classes and a large volume of documentary evidence was introduced on behalf of the plaintiffs; also two bankers testified to the curtailment of truck loans after the enactment of the amendatory statute. Plaintiffs rely strongly upon the testimony of Professor Worley of the University of Michigan, as presenting an altogether different factual picture than that relied upon by the plaintiffs in the *Bode case*. Professor Worley, an engineer, for the past five years has been identified with numerous State trucking associations. Worley advances a theory and formula upon which a motor vehicle tax schedule can be based. He takes the position that the plan involved in the legislation under consideration is arbitrary and unreasonable. Professor Worley admitted on cross-examination that his theory was highly controversial, and that there was a honest difference of opinion among scientific experts as to the relative merits of the various theories of taxation in this particular field. The record in this case contains the testimony of Frank N. Barker, Chief Highway Engineer of the State of Illinois, which is the same as reported in the *Bode case*.

Without prolonging this opinion with a discussion of the details of the two schools of thought on what constitutes a rational, reasonable and fair motor vehicle license fee, suffice it to say that it clearly becomes a legislative function to choose the one that serves better the needs of the legislation under review. The legislature in this matter has a broad range of discretion and is free to adopt the theory it believes, from its study and exercise of legislative discretion, to be the best. As we said in *Melton* v. *City of Paris*, 333 Ill.

190, 198: "A court will not hold an ordinance void and unreasonable where there is room for a fair difference of opinion upon the question, even though the correctness of the legislative judgment may be doubtful and the court may regard the ordinance as not the best which might be adopted for the purpose."

In *Sproles* v. *Binford*, 286 U. S. 374, a Texas statute forbade operation of any motor vehicle carrying a net load of freight exceeding seven thousand pounds. This was attacked as violative of the commerce clause and the fourteenth amendment of the Federal constitution. It was contended that the net load limitation, as contrasted with a possible gross load limitation, was "opposed to sound engineering opinion" and hence invalid. In overruling this contention the court said (page 388): "Limitations of size and weight are manifestly subjects within the broad range of legislative discretion. To make scientific precision a criterion of constitutional power would be to subject the State to an intolerable supervision hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the 14th Amendment was intended to secure."

Again the Supreme Court of the United States in *Capitol Greyhound Lines* v. *Brice*, 339 U. S. 542, 546, in discussing factors involved in State motor vehicle tax formulas, said: "These factors, like those relevant in considering the constitutionality of other State taxes, are so countless that we must be content with 'rough approximation' rather than precision."

This court, in the *Bode opinion*, disposed of this precise question adversely to the contentions of the plaintiffs herein. The new evidence offered in the present proceedings does not warrant a reversal of the views there expressed.

The only issue which was not presented to and considered by this court in its decision of the *Bode case* is the contention that the 1951 amendment violates that portion of section 13 of article IV of the Illinois constitution which provides as follows: "No Act hereafter passed shall embrace more than one subject, and that shall be expressed in the title. * * * No law shall be revised or amended by reference to its title

only but the law revised or the section amended shall be inserted at length in the new Act."

The title of the 1951 amendment is as heretofore set out in the first paragraph of this opinion. The title of the Motor Vehicle Act of 1919, to which the title of the 1951 amendment refers, is "An Act in relation to motor vehicles and to repeal a certain Act therein named."

The first argument of the plaintiffs in respect to this contention is that the act embraces both the subject of police regulations and the subject of revenue, and that the subject of revenue is not embraced in the title of the amendment.

The principles of law applicable generally to this question have been well stated as follows (50 Am. Jr., Statutes, sec. 197, p. 178, *et seq.*): "The constitutional prohibition of more than one subject in an act does not impose any limitation on the comprehensiveness of the subject, which may be as comprehensive as the legislature chooses to make it, provided it constitutes, in the constitutional sense, a single subject and not several. To constitute plurality of subject, an act must embrace two or more dissimilar and discordant subjects, that by no fair intendment can be considered as having any legitimate connection with or relation to each other. Within the meaning of the constitutional provision, matters which apparently constitute distinct and separate subjects are not so where they are not incongruous and diverse to each other. Generally speaking, the courts are agreed that a statute may include every matter germane, referable, auxiliary, incidental, or subsidiary to, and not inconsistent with, or foreign to, the general subject or object of the act. The constitutional provision is not intended, nor should it be so construed as, to prevent the legislature from embracing in one act all matters properly connected with one general subject or object, but the term 'subject' or 'object' as used in these provisions is to be given a broad and extended meaning, so as to allow the legislature full scope to include in one act all matters fairly, reasonably, naturally, logically, properly, or directly or indirectly connected with, or related to, each other or the same subject or object. The statute embraces but one subject or object where the matters included

are such that, if traced back, they will lead the mind to the subject as the generic head. On the other hand, an act may not embrace unrelated or unconnected subjects or objects, but the various topics in the body of the act should and must be kindred in nature, and germane to the subject or object. It has been said that there can be no surer test of compliance with the constitutional requirement of singleness of subject than that none of the provisions of an act can be read as relating or germane to any other subject than the one named in the title."

These general principles have been followed in the State of Illinois. In *Public Service Co.* v. *Recktenwald*, 290 Ill. 314, this court, in holding that the provisions for the power of eminent domain in the Public Utilities Act did not render such act void, said as follows:

"The constitutional provision that no act shall embrace more than one subject, which shall be expressed in the title, prohibits the passage of an act containing provisions not fairly embraced in the title and any such provisions are void, and it also prohibits the passage of an act relating to different subjects expressed in the title, in which case the whole act is void. [Citing cases.] The general purpose of the constitutional provision, however, is accomplished when a law has but one general subject, which is fairly indicated by its title. The title is not required to be an index to the body of the act or as comprehensive in matters of detail, but if it fairly indicates the general subject and reasonably covers all the provisions of the act and is not calculated to mislead the General Assembly or the people it is a sufficent compliance with the constitutional requirements. Unless the act contains matters having no proper connection or relation to the title, or the title itself contains subjects having no proper relation to each other, the constitutional provision is not violated. An act having a single general subject indicated in the title may contain any number of provisions, no matter how diverse they may be, so long as they are not inconsistent with or foreign to the general subject, and may be considered in furtherance of such subject by providing for the method and means of carrying out the general object. [Citing cases.]"

Although this particular issue has not heretofore been presented, this court has heretofore been called upon to decide analogous questions as to the validity of the Motor Vehicle Act. In *People* v. *Sargent*, 254 Ill. 514, the validity of the Motor Vehicle Act of 1911 as embracing more than one subject was challenged in reference to the section thereof imposing a penalty for operating or driving a vehicle as a chauffeur on the highways without having had an examination and obtaining a license as such. The title of the act included no reference to penal provisions for violation thereof. In holding the constitution not violated, we said, at page 517: "The word 'subject,' as used in the constitution, signifies the matter or thing forming the groundwork. It may contain many parts which grows out of it and are germane to it, and which, if traced back, will lead the mind to it as the generic head. Any matter or thing which may reasonably be said to be subservient to the general subject or purpose will be germane and may be properly included in the law."

The same result and reasoning appears in the case of *People* v. *Sisk*, 297 Ill. 314, wherein section 7 of the Motor Vehicle Act, making it a criminal offense to drive a tractor or other metal tired vehicle over the edge of a public highway of the State without protecting the edge by putting down solid planks, was challenged. *People* v. *Stacker*, 322 Ill. 232.

One of the more recent decisions of this court in this respect appears in *Clarke* v. *Storchak*, 384 Ill. 564, wherein we held the "guest statute," added to the Motor Vehicle Act by amendment of 1935, was properly included in the Motor Vehicle Act as incidental or germane to the main purpose of that act as expressed in the title and that the amendment is not invalid as an attempt to amend the Injuries Act.

Recognizing the realities of the Motor Vehicle Act, it constitutes both a regulation of motor vehicles and use of the highways under the police powers of the State and also the imposition of a privilege tax on motor vehicles for the privilege of using the highways as a revenue measure. Since its inception the Motor Vehicle Act has provided that

the revenues derived thereunder should be deposited in a State road fund and used solely for discharging the principal and interest of State road bonds and for the improvement of the highways. The exercise of both the police and revenue powers of the State may be combined in one act, provided they relate to only the one subject in the title and are not inconsistent therewith. *State* v. *Preston*, 103 *Ore.* 631, 206 Pac. 304, 23 A.L.R. 414; *Smallwood* v. *Jeter*, 42 Idaho 169, 244 Pac. 149; *Barnett* v. *State* (Ala.), 102 So. 483; *Wilson* v. *State* (Tenn.), 224 S.W. 168; *Smith* v. *Com.* (Ky.), 194 S.W. 367; *State* v. *Ingalls* (N.Mex.), 135 Pac. 1177.

The 1919 Motor Vehicle Act of Illinois was both a revenue and police power measure, relating to and embracing only one subject, *viz.*, motor vehicles. The title of the 1951 amendment gave the plainest possible notice that the subject of the proposed act was the amendment of sections 9, 11a and 20 of the Motor Vehicle Act and the repeal of certain other sections thereof. As stated in *City of Evanston* v. *Wauzau*, 364 Ill. 198, "An act to amend another act, the former setting out the latter's title, is as comprehensive as the act amended, and any provision which might have been inserted in the original act may be incorporated in the amendatory act without violating the constitutional provison that the subject of an act shall be expressed in the title."

Plaintiffs further contend that the 1951 act amends section 13 of the Motor Vehicle Act without inserting the amended section at length, contrary to section 13 of article IV of the Illinois constitution. Section 13 authorizes and empowers the Secretary of State to institute in the name of the people of the State of Illinois a suit or suits in any court of competent jurisdiction to enforce the collection of any mileage weight fees provided for in the act as well as other fees, fines, penalties or damages. The purpose of the constitutional provision requiring that the amended section of a law be inserted at length in the new act is to avoid the necessity of having to make reference to a prior law to determine and give meaning to an amendatory act. (*People ex rel. Gramlich* v. *City of Peoria*, 374

Ill. 313.) However, if the act is complete in itself, without reference to the general act, it does not contravene the constitutional provision merely for the reason that it repeals, modifies or amends, by implication, the general act. Any new provision of law may in some sense be said to amend and change the prior system of laws, and whenever there is an irreconcilable conflict between two acts the later one must prevail. To the extent of the conflict the later act amends the earlier one by implication, and, if the later act is not amendatory in form and perfect in itself, it is not within the prohibition of the constitution. It is not necessary, when a new act is passed, that all prior acts modified by it by implication shall be re-enacted and published at length. *Hollingsworth* v. *Chicago and Carterville Coal Co.* 243 Ill. 98; *People* v. *Chicago Transit Authority,* 392 Ill. 77.

The 1951 amendment effected amendments to sections 9, 11a and 20 of the Motor Vehicle Act and repealed certain specified sections of that law providing for payment of mileage weight fees. Section 13 of the Motor Vehicle Act is not mentioned or specified in the amendatory act. However, it cannot be said that the 1951 act is amendatory in form as to section 13. The 1951 amendment requires no reference to section 13 in order to be fully understood. It is complete and perfect in itself. The authorities cited by plaintiffs in support of their position involved amendatory acts which were not complete in themselves and which required reference to the prior or basic act being amended in order to be understood. The situation here presented is closely analagous to the situation in *Clarke* v. *Storchak,* 384 Ill. 564, in which the guest statute amendment to the Motor Vehicle Act was sustained, although it did not purport to amend in its title the Illinois Injuries Act.

The 1951 amendment to the Motor Vehicle Act refers to only one subject, *viz.*, motor vehicles, is complete within itself, requires reference to no other act, and is not violative of section 13 of article IV of the constitution.

Plaintiffs make the further contention that the 1951 amendment is confiscatory and violative of the fourteenth amendment to the United States constitution and of arti-

cle II of the Illinois constitution; also that it violates article III of the Illinois constitution in unlawfully delegating legislative authority to the Secretary of State; that the taxes imposed constitute property taxes invalid under article IX of the Illinois constitution because it was not based upon value; also, that the equal protection of the laws guaranteed under both the Illinois and United States constitutions is denied them by the provision relating to agricultural exemptions contained in section IX of the act. These same problems were all earnestly considered by the court in the *Bode case.* We adhere to our conclusions reached therein.

We have given all questions raised on this appeal serious consideration, and we have reached the conclusion, in view of what we have said heretofore and our pronouncements in the recent opinion of *Bode* v. *Barrett,* that the 1951 amendment to the Motor Vehicle Act of Illinois is constitutional, and the decree of the trial court is reversed.

Decree reversed.